

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DANA HAUSE,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

NO. EDCV 08-1501 AGR

MEMORANDUM OPINION AND  
ORDER

Dana Hause filed this action on October 31, 2008. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before Magistrate Judge Rosenberg on November 25 and 26, 2008. (Dkt. Nos. 9-10.) On May 26, 2009, the parties filed a Joint Stipulation ("JS") that addressed the disputed issues. (Dkt. No. 17.) The Court has taken the matter under submission without oral argument.

Having reviewed the entire file, the Court remands this matter to the Commissioner for proceedings consistent with this Opinion.

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## I.

**PROCEDURAL BACKGROUND**

On March 9, 2005, Hause filed an application for Supplemental Security Income benefits alleging a disability onset date of April 27, 2004. Administrative Record (“AR”) 13. The application was denied initially and upon reconsideration. *Id.* An Administrative Law Judge (“ALJ”) conducted hearings on September 11, 2007 and May 13, 2008, at which Hause, a medical expert (“ME”), and a vocational expert testified. AR 42-69. On June 17, 2008, the ALJ issued a decision denying benefits. AR 10-19. On September 23, 2008, the Appeals Council denied Hause’s request for review. AR 5-7.

This lawsuit followed.

## II.

**STANDARD OF REVIEW**

Pursuant to 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

“Substantial evidence” means “more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner’s decision, the Court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than one rational interpretation, the Court must defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

1 III.

2 **DISCUSSION**

3 **A. Disability**

4 A person qualifies as disabled, and thereby eligible for such benefits, “only  
5 if his physical or mental impairment or impairments are of such severity that he is  
6 not only unable to do his previous work but cannot, considering his age,  
7 education, and work experience, engage in any other kind of substantial gainful  
8 work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20,  
9 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

10 **B. The ALJ’s Findings**

11 Hause has the following severe impairments: bipolar disorder and  
12 personality disorder. AR 15. Hause’s residual functional capacity (“RFC”) has no  
13 exertional limitations. She “has the ability to perform up to 4-5 complex step  
14 instructions in a relatively habituated setting without substantial changes; should  
15 not perform tasks requiring hypervigilance; should not operate hazardous  
16 machinery; and, should perform no fast paced work.” AR 16. Hause is able to  
17 perform her past relevant work as a delivery driver, banquet secretary, and  
18 phlebotomist. AR 18.

19 **C. The Medical Evidence**

20 On April 28, 2004, Hause put her arm threw a window causing multiple  
21 lacerations and requiring stitches. AR 197. She called 911. *Id.* When the police  
22 arrived, Hause “began breaking things and throwing things.” *Id.* The police  
23 involuntarily committed her on a 5150 hold.<sup>1</sup> *Id.* At the hospital, Hause reported  
24 to Dr. Thacker that she had had an argument with her husband, and that although  
25 she had been sober for three years and had not smoked marijuana for five

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27 <sup>1</sup> A “5150 hold” refers to Cal. Welfare & Inst. Code § 5150, which permits a  
28 person to be placed in an approved mental health facility for 72 hours for  
“treatment and evaluation” if the person, because of a mental disorder, “is a  
danger to others, or to himself or herself, or gravely disabled.”

1 months, she drank and smoked some marijuana. *Id.* A mental status exam  
2 revealed “good eye-to-eye contact, and is cooperative. She is oriented. She has  
3 pressured speech. \* \* \* Her thought process is logical. She denies hearing  
4 voices or being paranoid. \* \* \* Her general fund of information is poor. The  
5 patient is quite emotional during interview, and she is angry, irritable, and  
6 frustrated because her 8-month-old baby has been taken away by CPS. \* \* \* The  
7 patient has a poor insight into her illness. Her judgment is poor. \* \* \* The patient  
8 engages in impulsive and unpredictable behavior which places the patient and  
9 others at the risk of injury. The patient denies being suicidal.” AR 198. Thacker  
10 diagnosed her with a mood disorder, not otherwise specified and an episodic  
11 history of marijuana abuse. *Id.* He gave her a Global Assessment of Functioning  
12 (“GAF”) of 30. *Id.*

13 On Hause’s discharge from the hospital on May 6, 2004, Dr. Quan gave  
14 Hause a “final diagnosis” of bipolar disorder, not otherwise specified,  
15 amphetamine abuse,<sup>2</sup> and a GAF of 50. AR 190. Quan said that Hause’s  
16 hospital admission was “prolonged [because] she was violent, she was acting  
17 bizarrely, increased pressured speech, and talking nonsense.” AR 191.  
18 However, at discharge, “[h]er manic and psychotic symptoms subsided with  
19 current treatment.” *Id.*

20 On May 12, 2004, Hause was seen by Marriage and Family Therapist  
21 Prendergast. AR 275. Hause admitted to a long history of alcohol and drug  
22 abuse, including marijuana, PCP, and methamphetamine. *Id.* Hause reported  
23 seeing “shadows on an occasional basis.” *Id.* She said she had stopped taking  
24 her medications. AR 276. Prendergast diagnosed Hause with psychotic  
25 disorder, not otherwise specified, and marijuana, amphetamine, and alcohol  
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27 <sup>2</sup> Quan noted that Hause’s blood testified positive for amphetamine and  
28 marijuana. AR 190.

1 dependence. AR 278. She gave Hause a GAF of 48. *Id.* She referred Hause to  
2 a staff psychiatrist for further evaluation. AR 277.

3 On July 27, 2004, Hause saw Dr. Thacker. AR 270. Hause reported she  
4 was feeling better. *Id.* Thacker prescribed various medications. *Id.*

5 Starting on September 29, 2004, and continuing through May 18, 2007,  
6 Hause was seen by Dr. Payne. AR 268, 292. For each visit Payne completed a  
7 "Medication Visit" form. Many of the records therefore reflect adjustments to  
8 Hause's medications. A review of the many visits indicates that Hause's  
9 condition was labile. Sometimes she gave positive reports about her mood; other  
10 times, she gave negative reports. For example, on June 29, 2005, she reported  
11 falling episodes and memory problems. AR 255. In two visits in October of 2005,  
12 she reported that she was sad, depressed, weepy, and slept poorly. AR 250,  
13 255. On November 23, 2005, Hause reported that she was sleeping better but  
14 her mood was "still irritable." AR 321. On April 12, 2006, Hause reported that  
15 she was exhausted, not sleeping well, and her mood was irritable. AR 316. By  
16 contrast, on June 13, 2006, Payne stated that Hause's mood was "not bad,  
17 mellow, straightline," and that one of the drugs was helping her sleep better. AR  
18 312. Yet, a month later, on July 11, 2006, Hause reported that her mood was  
19 more irritable, that she had been crying more frequently; Payne found that her  
20 speech was "somewhat pressured, irritable." AR 309.

21 The remainder of 2006 and 2007 continued with the same ups and downs.  
22 See AR 302, 301, 298, 297, 295, 293, 292.

23 In the middle of this treatment period, on March 15, 2006, Payne  
24 completed a Medical Report for CalWORKs in which he stated that Hause was  
25 unable to work, diagnosed with bipolar disorder, and her prognosis was fair. AR  
26 318. Payne stated that she had "mood fluctuations," "impaired concentration,"  
27 and "depression." *Id.* He stated that she had been incapacitated since May 25,  
28 2004. *Id.* Four months later, on July 18, 2006, Payne completed a Medical

1 Opinion Re: Ability to do Work-Related Activities. AR 304-07. He was asked to  
2 rate Hause using the following terms and descriptions: unlimited or very good  
3 (ability to function in this area is more than satisfactory); good (ability to function  
4 in this area is limited but satisfactory); fair (ability to function in his area is  
5 seriously limited, but not precluded); and poor or none ("poor") (no useful ability to  
6 function in this area). AR 304. Under the category "Mental Abilities and Aptitude  
7 Needed to do Unskilled Work," Payne rated her as fair or poor in all areas. AR  
8 304-05. He explained Hause's limitations in these areas as follows: "Patient has  
9 never responded well to medications and has had problems with side effects.  
10 Mood fluctuates, is labile, concentration fluctuates, has auditory hallucinations."  
11 AR 306. Under the category "Mental Abilities and Aptitudes Needed to do  
12 Semiskilled and Skilled Work," Payne rated her as poor in all areas. *Id.* He  
13 explained Hause's limitations in these areas as follows: "As described above,  
14 pt's mood has been chronically unstable. dx'd with bipolar disorder. Fluctuating  
15 mood and concentration affect her ability to focus." *Id.* In the category "Mental  
16 Abilities and Aptitudes Needed to do particular Types of Jobs," Payne rated her  
17 as good in her interaction with the public; fair in her ability to maintain socially  
18 appropriate behavior; good in her ability to adhere to basic standards of neatness  
19 and cleanliness; poor in her ability to travel in unfamiliar places; and fair in her  
20 ability to use public transportation. AR 307-08. Payne explained Hause's  
21 limitations in these areas as follows: "Patient doesn't interact very well in public."  
22 AR 307. Payne also stated that at Hause's last visit, she "felt like 'snapping,' was  
23 agitated, speech pressured, having crying episodes." *Id.* Finally, Payne said that  
24 Hause's impairments would cause her to be absent from work about four days  
25 per month. *Id.*

26 The ME testified that Hause had "been given different types of diagnoses,  
27 from very severe diagnoses to mild. So, I'm going to go with a mood disorder not  
28 otherwise specified" and "a personality disorder not otherwise specified." AR 46.

1 The ME then opined as to Hause's RFC, which the ALJ adopted. AR 46-47. The  
2 ME stated that the RFC was "consistent with the records. Essentially, she gets a  
3 diagnosis of mood disorder historically from 2004 onward; and then, she's in a  
4 type of treatment. The main complaint was that she was not responding to  
5 medication in the early stages, which is actually mentioned in Exhibit 12F in one  
6 of the pages, which, of course, contradicts the record, because she continuously  
7 shows improvement with medication. The mood is stable, she's doing fine,  
8 Exhibit 12F, as well as Exhibit 11F and 10F. So, the, the – earlier, there was  
9 some slowness in her response; but in the recent past, 2006 and 2007, there is  
10 consistent suggestion of, her mood is stable." AR 47-48.

11 A non-examining physician's opinion constitutes substantial evidence when  
12 it is supported by other evidence in the record and consistent with it. *Andrews v.*  
13 *Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995). However, a non-examining  
14 physician's opinion cannot by itself constitute substantial evidence. *Widmark v.*  
15 *Barnhart*, 454 F.3d 1063, 1066 n.2 (9th Cir. 2006). "When there is conflicting  
16 medical evidence, the Secretary must determine credibility and resolve the  
17 conflict." *Thomas v. Barnhart*, 278 F.3d 947, 956-57 (9th Cir. 2002) (citation and  
18 quotation marks omitted).

19 When, as here, a treating physician's opinion is contradicted, the ALJ must  
20 present "specific, legitimate reasons supported by substantial evidence in the  
21 record" before rejecting it. *Widmark*, 454 F.3d at 1066-67.

22 The ALJ rejected Payne's 2006 opinion about Hause's ability to work for  
23 the following reasons: (1) the ME "was the only medical professional who has  
24 had an opportunity to review the entire record as developed up to the date of the  
25 hearing and to be present at the hearing for the testimony of the claimant"; (2)  
26 Payne's records "appear[] to be based primarily on the subjective statements of  
27 the claimant"; (3) and the records show that Hause's treatment was conservative.  
28 AR 18. These reasons are not supported by substantial evidence in the record.



1 The first reason is not supported by substantial evidence. The ME initially  
 2 stated his opinion at a hearing at which Hause did not testify. AR 44. The ME  
 3 stated that Hause “continuously shows improvement with medication.” AR 48.  
 4 However, as Payne’s treating records indicate, Hause’s course of treatment did  
 5 *not* reflect continuous improvement. See AR 255, 249-52, 319-22, 316-17, 312-  
 6 14, 309, 300-03, 296-299. The ME also stated that “in the recent past, 2006 and  
 7 2007, there is consistent suggestion of, her mood is stable.” AR 48. However,  
 8 the ME’s opinion is again inconsistent with the treatment records, which show  
 9 that in 2006-2007 Hause’s mood continued to be unstable. *Compare* AR 314,  
 10 316-17, 319-20 (in Feb.-May 2006, meds have no effect on mood and cause  
 11 problems with controlling muscular movements, patient irritable, drained); AR  
 12 312-313 (in May-June 2006, mood not as bad, mellow, doesn’t snap like before);  
 13 AR 309 (in July 2006, felt like snapping, irritable, crying more frequently,  
 14 pressured speech, auditory hallucinations); AR 301-02 (in Aug. 2006, mood  
 15 stable, 3 good days in a row,<sup>3</sup> no major mood swings); AR 299-300 (in Oct.-Nov.  
 16 2006, mood stable); AR 296-98 (in Dec. 2006-Feb. 2007, crying episodes for 3-4  
 17 hours, depressed for no reason, snappy, meds not stabilizing mood); AR 295 (in  
 18 Mar. 2007, not depressed for one week); AR 294 (later in Mar. 2007, gets mad  
 19 easily). The ME’s testimony that Hause had no episodes of decompensation (AR  
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22  
 23 <sup>3</sup> When Payne describes Hause’s mood as stable, or more stable, Payne  
 24 sometimes describes Hause as having three good days in a row or as not being  
 25 depressed for one week. AR 295, 302. As the Ninth Circuit has noted, a treating  
 26 physician’s statements “must be read in context of the overall diagnostic  
 27 picture.” *Ryan v. Comm’r of Social Security*, 528 F.3d 1194, 1201 (9th Cir. 2008)  
 28 (citation omitted). Read in context with the overall treatment record, Payne’s  
 description of a more stable mood on occasion does not necessarily mean that  
 Hause was no longer subject to mood instability. See *id.* On the last two visits in  
 the record – April 17, 2007, and May 18, 2007 – Hause was taking her  
 medications as prescribed and reported that her mood was stable. AR 293, 292.  
 However, based on her lengthy history, two visits are insufficient to establish a  
 trend.



18) is difficult to reconcile with Hause's hospitalization on a 5150 hold.<sup>4</sup> AR 197.

The ALJ's second reason is not supported by substantial evidence. The ME relied on the same treatment records and differed only in his interpretation. AR 45-48; see *Orn*, 495 F.3d at 632 ("[w]hen an examining physician relies on the same clinical findings as a treating physician, but differs only in his or her conclusions, the conclusions of the examining physician are not 'substantial evidence'"). Payne did in fact have lab work done. *E.g.*, AR 309.

The ALJ's third reason is also not supported by substantial evidence. Hause was treated extensively over several years. Payne continuously tried different medications and different dosages in an attempt to find the right mix of drugs that would stabilize Hause's symptoms.

Because the ALJ failed to set forth specific and legitimate reasons supported by substantial evidence for rejecting Payne's opinion, that opinion must be credited on remand. See *Widmark*, 454 F.3d at 1069.

#### **D. Hause's Credibility**

"To determine whether a claimant's testimony regarding subjective pain or symptoms is credible, an ALJ must engage in a two-step analysis." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007).

##### **1. Step One of the Credibility Analysis**

At Step One, "the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment 'which could reasonably be expected to produce the pain or other symptoms alleged.' The claimant,

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<sup>4</sup> Episodes of decompensation are "exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence or pace. Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two)." 20 C.F.R. pt. 404, subpt. P, App. 1, § 12.00.C.4. Episodes of decompensation may be inferred from medical records showing significant alteration in medication or documentation of the need for a more structured psychological support system such as hospitalization. *Id.*

1 however, ‘need not show that her impairment could reasonably be expected to  
2 cause the severity of the symptom she has alleged; she need only show that it  
3 could reasonably have caused some degree of the symptom.’ ‘Thus, the ALJ  
4 may not reject subjective symptom testimony . . . simply because there is no  
5 showing that the impairment can reasonably produce the *degree* of symptom  
6 alleged.’” *Id.* (emphasis in original, citations omitted); *Bunnell v. Sullivan*, 947  
7 F.2d 341, 344 (9th Cir. 1991) (en banc). The ALJ found that Hause’s “medically  
8 determinable impairments could reasonably be expected to produce the alleged  
9 symptoms.” AR 17.

## 10 **2. Step Two of the Credibility Analysis**

11 “Second, if the claimant meets this first test, and there is no evidence of  
12 malingering, ‘the ALJ can reject the claimant’s testimony about the severity of her  
13 symptoms only by offering specific, clear and convincing reasons for doing so.’”  
14 *Lingenfelter*, 504 F.3d at 1036 (citations omitted). The ALJ made no finding, nor  
15 was there any evidence of malingering.

16 “In making a credibility determination, the ALJ ‘must specifically identify  
17 what testimony is credible and what testimony undermines the claimant’s  
18 complaints.’” *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (citation  
19 omitted). “[T]o discredit a claimant’s testimony when a medical impairment has  
20 been established, the ALJ must provide specific, cogent reasons for the  
21 disbelief.” *Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007) (citations and  
22 quotation marks omitted). “The ALJ must cite the reasons why the claimant’s  
23 testimony is unpersuasive.” *Id.* (citation and quotation marks omitted). In  
24 weighing credibility, the ALJ may consider factors including: the nature, location,  
25 onset, duration, frequency, radiation, and intensity of any pain; precipitating and  
26 aggravating factors (e.g., movement, activity, environmental conditions); type,  
27 dosage, effectiveness, and adverse side effects of any pain medication;  
28 treatment, other than medication, for relief of pain; functional restrictions; the

1 claimant's daily activities; and "ordinary techniques of credibility evaluation."  
2 *Bunnell*, 947 F.2d at 346 (en banc) (citing Social Security Ruling 88-13,<sup>5</sup>  
3 quotation marks omitted). The ALJ may consider (a) inconsistencies or  
4 discrepancies in claimant's statements; (b) inconsistencies between claimant's  
5 statements and activities; (c) exaggerated complaints; and (d) an unexplained  
6 failure to seek treatment. *Thomas*, 278 F.3d at 958-59.

7 The ALJ gave two reasons for discounting Hause's credibility: (1) the  
8 "objective medical evidence fails to fully support the claimant"; and (2) she  
9 displayed "a lack of candor regarding her history." AR 17.

10 The first reason is not supported by substantial evidence. Hause testified  
11 that she cannot work due to her mood instability and impaired concentration. AR  
12 61, 64. Although she continues to hear voices, she can deal with it because she  
13 knows "there's really not somebody there." AR 62. Hause's testimony is fully  
14 consistent with her treating physician's evaluations and medical records over a  
15 two-year period. AR 304-07, 318.

16 The ALJ compared Hause's testimony that she has not used drugs since  
17 2004 (AR 68) with medical records showing that she refused drug testing in 2005.  
18 AR 221. The ALJ cited a letter from a licensed clinical social worker (Clark) to the  
19 Department of Social Services dated April 19, 2005, in which Clark stated:  
20 "Recently, [Hause] was offered drug free transitional housing where she would be  
21 able to have her children returned to her. One of the requirements is that she be  
22 Alcohol and Drug free. She was asked to test and refused testing. She left  
23 before the test could be administered." AR 17, 220-21. Payne's records in  
24 September 2005 also refer to Hause "being unable to give a urine sample" and  
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26 <sup>5</sup> Social Security rulings do not have the force of law. Nevertheless, they  
27 "constitute Social Security Administration interpretations of the statute it  
28 administers and of its own regulations," and are given deference "unless they are  
plainly erroneous or inconsistent with the Act or regulations." *Han v. Bowen*, 882  
F.2d 1453, 1457 (9th Cir. 1989).

1 therefore being considered positive. AR 252. Inconsistent statements  
2 concerning drug use could constitute substantial evidence supporting an ALJ's  
3 credibility finding. See *Thomas*, 278 F.3d at 959; *Verduzco v. Apfel*, 188 F.3d  
4 1087, 1090 (9th Cir. 1999).

5 When, as here, an ALJ relies on a reason that is not supported by  
6 substantial evidence, the question is "whether the ALJ's decision remains legally  
7 valid, despite such error." *Carmickle v. Comm'r of the Soc. Sec. Admin.*, 533  
8 F.3d 1155, 1162 (9th Cir. 2008). The court must determine whether "the ALJ's  
9 remaining reasoning *and ultimate credibility determination* were adequately  
10 supported by substantial evidence." *Id.* Here, even assuming that the ALJ could  
11 properly rely on Hause's refusal to take a drug test, his ultimate credibility  
12 determination is not supported by substantial evidence to the extent Hause's  
13 testimony is consistent with Payne's evaluations.

14 **E. Statements by Hause's Mother**

15 On June 13, 2004, Hause's mother completed a Function Report about her  
16 daughter. AR 139-47. The mother reported that she had to remind Hause to  
17 wash, to tell her to comb her hair, and to ask if she had brushed her teeth. AR  
18 140. She also had to remind Hause to take her medicine and to make sure she  
19 took it. AR 141. Hause could no longer cook because she forgot things on  
20 appliances. *Id.* Hause couldn't go out alone because she could wander off, hurt  
21 herself, or hurt others. AR 142. Hause doesn't follow written instructions well.  
22 AR 144.

23 The ALJ stated that he gave "greater weight to the documented medical  
24 evidence of record." An ALJ may discount lay testimony if it conflicts with medical  
25 evidence. *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). The ALJ's credibility  
26 assessment is supported by substantial evidence to the extent that the mother's  
27 statements conflict with Payne's evaluations.

1 IV.

2 **ORDER**

3 IT IS HEREBY ORDERED that the matter is remanded at Step Four for  
4 proceedings consistent with this Opinion. On remand, the Commissioner must  
5 credit the opinions of Dr. Payne as true.

6 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
7 Order and the Judgment herein on all parties or their counsel.

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10 DATED: September 21, 2009



11 ALICIA G. ROSENBERG  
12 United States Magistrate Judge  
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